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**SUBJECT** Appeal Brief (10/006,059)

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**Number of Pages** 36

**Date** 10/26/2005

## MESSAGE

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This fax communication contains:

1. one copy of a Fax Transmittal Form;
2. two copies of a Fee Transmittal Letter, including fee; and
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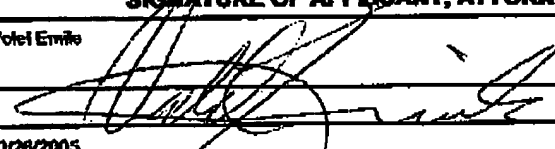
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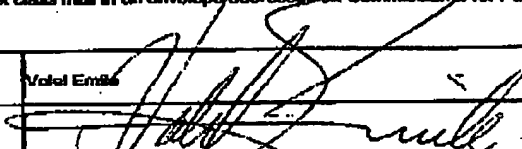
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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	10/006,059
	Filing Date	12/06/2001
	First Named Inventor	Owip N. Banerjee
	Art Unit	2151
	Examiner Name	Nght V. Tran
Total Number of Pages in This Submission	Attorney Docket Number	AUSS2001007 (US)

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/Declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks Appeal Brief.		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name Signature Date	Volei Emile  10/26/2005	

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This collection of information is required by 37 CFR 1.6. This information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1460, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. 10/006,059  
Appeal Brief dated 10/26/2005  
Reply to Office Action of 06/07/2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Application of:	:
Banerjee et al.	:
	: Before the Examiner:
Serial No: 10/006,059	: Nghi V. Tran
	:
Filed: 12/06/2001	: Group Art Unit: 2151
	:
Title: APPARATUS AND METHOD	: Confirmation No.: 8983
OF USING XML DOCUMENTS TO	:
PERFORM NETWORK PROTOCOL	:
SIMULATION	:

TRANSMITTAL OF APPELLANTS' BRIEF UNDER 37 C.F.R. 1.192(a)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attached is Appellant's Brief, in triplicate, from a decision of the Examiner dated 06/07/2005, finally rejecting the claims in the Application.

The item(s) marked below are appropriate:

1. \_\_\_\_\_ A petition and fee for extension of term for reply to the final rejection is attached.
2.   X   Appeal fee  
        X   other than a small entity. Fee: \$500.00
3.   X   Payment  
        X   Please charge Deposit Account 09-0447 the sum of \$500.00. A duplicate of this notice is attached.

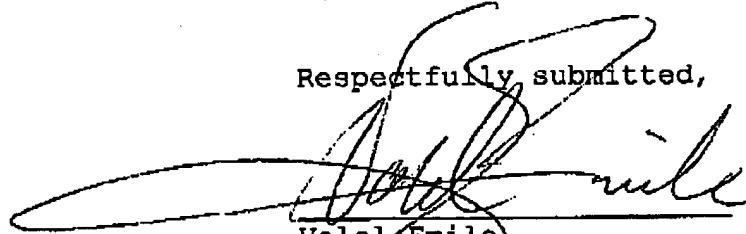
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The Commissioner is hereby authorized to charge any additional fee, which may be required or credit any overpayment to Deposit Account No. 09-0447.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read 'Volel Emile', is written over the typed name and contact information.

Volel Emile  
Attorney for Applicants  
Registration No. 39,969  
(512) 306-7969

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an appeal to a final rejection dated June 07, 2005 of claims 1 - 20 of Application Serial Number 10/006,059 filed on December 06, 2001. This Appeal Brief is submitted pursuant to a Notice of Appeal filed on August 29, 2005 in accordance with 37 C.F.R. 1.192.

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Appeal Brief dated 10/26/2005  
Reply to Office Action of 06/07/2005

BRIEF FOR APPLICANTS - APPELLANTS

(1)

Real Party in Interest

The real party in interest is International Business Machines Corporation (IBM), the assignee.

(2)

Related Appeals and Interferences

There are no other appeals or interferences known to appellants, appellants' representative or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3)

Status of Claims

Claims 1 - 20 have been finally rejected in an Office Action dated June 07, 2005.

(4)

Status of Amendment

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(5)

Summary of the Invention

The present invention provides a method of using an eXtensible Markup Language (XML) document to perform network protocol simulation. In accordance with the teachings of the invention, network protocol data packets are used to generate an XML document. Then, changes are  
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made in the document to perform network protocol simulation  
(see page 27, line 19 to page 28, line 4).

(6)

Issues

Whether Claims 1 - 20 were properly rejected under 35  
U.S.C. §102(e) as being anticipated by Lienhard et al.

(7)

Grouping of Claims

The rejected claims stand or fall together.

(8)

Argument

In considering a Section 102 rejection, all the elements of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); *Atlas Powder Co. v. Dupont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984).

Lienhard et al. purport to teach an information technology system for the definition, optimization and control of processes. According to Lienhard et al., the disclosure describes an information technology system to control processes consisting of sequences of discrete events, whereby a process model corresponds to a real process or reflects the real process. The process model and the real process are coupled to each other via an  
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interface. Thus, direct data exchange between the process model and the real process occurs through the interface preferably using XML documents. Although, the process model is coupled to the real process, it can be independent of the real process. This allows the system to perform simulation of process modifications and/or optimization of the process without interruption of the real process. In such a case, process modification in the process model can be checked without interrupting the real process and if the modification was found to be successful, it can be integrated in whole or in part in the real process by way of the interface.

Thus, Lienhard et al. purport to teach process simulation using XML documents which is quite different from performing network protocol simulation using XML documents as claimed in the present Application.

As already explained in the Specification as well as in the Response to the first Office Action, the XML language allows designers to create their own customized tags, enabling definition, transmission, validation, and interpretation of data between applications and between organizations. Thus, if network communications protocol connection establishment between two computer systems on a network, transition state of each user data packet and network communications protocol close connection procedures are known, an XML document may be generated to represent the communications protocol data transactions between the two systems. Varying any element or data in the generated document is in effect modifying the network communications protocol data. Hence the present invention provides an  
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easy and efficient way of simulating network communications protocol.

In any case, since Lienhard et al. do not teach, show or suggest the steps of changing a part of an XML document that has been generated using network protocol data packets to perform network protocol simulation as claimed, Applicants submit that the claims in the Application are allowable. Hence, Applicants respectfully request allowance and passage to issue of the claims in the application.

Respectfully submitted,

By: 

Volel Emile  
Attorney for Applicants  
Registration No. 39,969  
(512) 306-7969

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#### APPENDIX

1. (Previously presented) A method of performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the method comprising the steps of:

generating an XML document using network protocol data packets; and

changing a part of the XML document to perform the network protocol simulation.

2. (Original) The method of Claim 1 wherein the step of changing a part of the XML document includes the step of changing design characteristics of the network protocol to effect the XML document generation process.
3. (Original) The method of Claim 2 wherein the resultant XML document is used as a simulation aid.
4. (Original) The method of Claim 3 wherein the XML document is validated using a schema.

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5. (Original) The method of Claim 4 wherein new data packets are used to change the XML document.
6. (Previously presented) A computer program product on a computer readable medium for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer program product comprising:  
  
code means for generating an XML document using network protocol data packets; and  
  
code means for changing a part of the XML document to perform the network protocol simulation.
7. (Original) The computer program product of Claim 6 wherein the code means for changing a part of the XML document includes code means for changing design characteristics of the network protocol to effect the XML document generation process.
8. (Original) The computer program product of Claim 7 wherein the resultant XML document is used as a simulation aid.
9. (Original) The computer program product of Claim 8 wherein the XML document is validated using a schema.

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10. (Original) The computer program product of Claim 9 wherein new data packets are used to change the XML document.

11. (Previously presented) An apparatus for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the apparatus comprising:

means for generating an XML document using network protocol data packets; and

means for changing a part of the XML document to perform the network protocol simulation.

12. (Original) The apparatus of Claim 11 wherein the means for changing a part of the XML document includes means for changing design characteristics of the network protocol to effect the XML document generation process.

13. (Original) The apparatus of Claim 12 wherein the resultant XML document is used as a simulation aid.

14. (Original) The apparatus of Claim 13 wherein the XML document is validated using a schema.

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15. (Original) The apparatus of Claim 14 wherein new data packets are used to change the XML document.

16. (Previously presented) A computer system for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer system comprising:

at least one memory device for storing code data; and

at least one processor for processing the code data to generate an XML document using network protocol data packets, and to change a part of the XML document to perform the network protocol simulation.

17. (Original) The computer system of Claim 16 wherein the processor further processes the code data to change design characteristics of the network protocol to effect the XML document generation process.

18. (Original) The computer system of Claim 17 wherein the resultant XML document is used as a simulation aid.

19. (Original) The computer system of Claim 18 wherein the XML document is validated using a schema.

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20. (Original) The computer system of Claim 19 wherein new data packets are used to change the XML document.

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made in the document to perform network protocol simulation  
(see page 27, line 19 to page 28, line 4).

(6)

Issues

**Whether Claims 1 - 20 were properly rejected under 35  
U.S.C. §102(e) as being anticipated by Lienhard et al.**

(7)

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The rejected claims stand or fall together.

(8)

Argument

In considering a Section 102 rejection, all the elements of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); *Atlas Powder Co. v. Dupont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984).

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interface. Thus, direct data exchange between the process model and the real process occurs through the interface preferably using XML documents. Although, the process model is coupled to the real process, it can be independent of the real process. This allows the system to perform simulation of process modifications and/or optimization of the process without interruption of the real process. In such a case, process modification in the process model can be checked without interrupting the real process and if the modification was found to be successful, it can be integrated in whole or in part in the real process by way of the interface.

Thus, Lienhard et al. purport to teach process simulation using XML documents which is quite different from performing network protocol simulation using XML documents as claimed in the present Application.

As already explained in the Specification as well as in the Response to the first Office Action, the XML language allows designers to create their own customized tags, enabling definition, transmission, validation, and interpretation of data between applications and between organizations. Thus, if network communications protocol connection establishment between two computer systems on a network, transition state of each user data packet and network communications protocol close connection procedures are known, an XML document may be generated to represent the communications protocol data transactions between the two systems. Varying any element or data in the generated document is in effect modifying the network communications protocol data. Hence the present invention provides an

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Respectfully submitted,

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#### APPENDIX

1. (Previously presented) A method of performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the method comprising the steps of:

generating an XML document using network protocol data packets; and

changing a part of the XML document to perform the network protocol simulation.

2. (Original) The method of Claim 1 wherein the step of changing a part of the XML document includes the step of changing design characteristics of the network protocol to effect the XML document generation process.
3. (Original) The method of Claim 2 wherein the resultant XML document is used as a simulation aid.
4. (Original) The method of Claim 3 wherein the XML document is validated using a schema.

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15. (Original) The apparatus of Claim 14 wherein new data packets are used to change the XML document.
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easy and efficient way of simulating network communications protocol.

In any case, since Lienhard et al. do not teach, show or suggest the steps of changing a part of an XML document that has been generated using network protocol data packets to perform network protocol simulation as claimed, Applicants submit that the claims in the Application are allowable. Hence, Applicants respectfully request allowance and passage to issue of the claims in the application.

Respectfully submitted,

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#### APPENDIX

1. (Previously presented) A method of performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the method comprising the steps of:

generating an XML document using network protocol data packets; and

changing a part of the XML document to perform the network protocol simulation.

2. (Original) The method of Claim 1 wherein the step of changing a part of the XML document includes the step of changing design characteristics of the network protocol to effect the XML document generation process.
3. (Original) The method of Claim 2 wherein the resultant XML document is used as a simulation aid.
4. (Original) The method of Claim 3 wherein the XML document is validated using a schema.

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5. (Original) The method of Claim 4 wherein new data packets are used to change the XML document.
6. (Previously presented) A computer program product on a computer readable medium for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer program product comprising:  
  
code means for generating an XML document using network protocol data packets; and  
  
code means for changing a part of the XML document to perform the network protocol simulation.
7. (Original) The computer program product of Claim 6 wherein the code means for changing a part of the XML document includes code means for changing design characteristics of the network protocol to effect the XML document generation process.
8. (Original) The computer program product of Claim 7 wherein the resultant XML document is used as a simulation aid.
9. (Original) The computer program product of Claim 8 wherein the XML document is validated using a schema.

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10. (Original) The computer program product of Claim 9 wherein new data packets are used to change the XML document.

11. (Previously presented) An apparatus for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the apparatus comprising:

means for generating an XML document using network protocol data packets; and

means for changing a part of the XML document to perform the network protocol simulation.

12. (Original) The apparatus of Claim 11 wherein the means for changing a part of the XML document includes means for changing design characteristics of the network protocol to effect the XML document generation process.

13. (Original) The apparatus of Claim 12 wherein the resultant XML document is used as a simulation aid.

14. (Original) The apparatus of Claim 13 wherein the XML document is validated using a schema.

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15. (Original) The apparatus of Claim 14 wherein new data packets are used to change the XML document.

16. (Previously presented) A computer system for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer system comprising:

at least one memory device for storing code data; and

at least one processor for processing the code data to generate an XML document using network protocol data packets, and to change a part of the XML document to perform the network protocol simulation.

17. (Original) The computer system of Claim 16 wherein the processor further processes the code data to change design characteristics of the network protocol to effect the XML document generation process.

18. (Original) The computer system of Claim 17 wherein the resultant XML document is used as a simulation aid.

19. (Original) The computer system of Claim 18 wherein the XML document is validated using a schema.

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20. (Original) The computer system of Claim 19 wherein new data packets are used to change the XML document.

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